

ORIGINAL  
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*Robert B. Taylor*

JUL 24 2 55 PM '89

JUL 24 1989

July 20, 1989

AIRMAIL

FCC MAIL BRANCH

Robert B. Taylor, Licensee  
WTRU-FM  
500 N. Delaware Blvd.  
P.O. Box 848  
Jupiter, FL 33458

Ms. Donna R. Searcy, Secretary  
Federal Communications Commission  
1919 M Street NW  
Washington, D.C. 20554

RE: File No. BPH-890103MD

Dear Ms. Searcy:

Please find enclosed for filing the original and required copies of a "Petition to Deny."

This "Petition to Deny" is in reference to an application for a new FM radio station at Jupiter, Florida, filed by Jupiter Broadcasting Corporation, which is mutually exclusive with a renewal application for WTRU-FM (formerly WKSJ-FM), Jupiter, Florida, of which I am the licensee.

Please call the undersigned at (407) 744-6398 should there be any questions about this matter.

Sincerely,

*Robert B. Taylor*

Robert B. Taylor  
Licensee, WTRU-FM

RBT/ms

Enc.

cc: Jupiter Broadcasting Corp.

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JUL 24 1989

FM EXAMINERS

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

JUL 24 2 55 PM '89  
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In re Application of

Jupiter Broadcasting Corp.

For a NEW FM radio station at  
Jupiter, FL (Mutually exclusive with  
the renewal application for WTRU-FM,  
formerly WKSJ-FM, Jupiter, FL)

To: Chief, Mass Media Bureau

File No. BPH-890103MD

PETITION TO DENY

1) Based on the evidence described below and in attached exhibits, Petitioner asserts that "Jupiter Broadcasting Corp." is using the commission's license renewal process as a means to force an existing commission licensee, myself, to sell this FM station to it. It is obvious from the chronology below that having been unsuccessful in their attempts to get me to agree to sell WTRU-FM (formerly WKSJ-FM), Jupiter, Florida, to them, the Levine group has filed its competing application against the Jupiter license in an effort to force me to accede to their demands. Therefore, the application of "Jupiter Broadcasting Corp." should be denied and dismissed by the commission.

2) The 1988 FCC Form 301 does not require a corporate applicant to list all of its equity shareholders, just individuals holding more than 50% of the applicant's voting stock. The equity shareholders of "Jupiter Broadcasting Corp." are Charles E. Reid and Paul J. Levine, both of Florida, and Philip Grabber of Kentucky. These three individuals have carefully structured their new corporation so that Charles Reid holds 100% of the votes, thus concealing from the commission the fact that both Mr. Levine and Mr. Grabber are also equity shareholders with financial interests in "Jupiter Broadcasting Corp."

3) The following facts reveal the actual intent of "Jupiter Broadcasting Corp.":

September 10, 1987. Paul Levine phoned my office in Fort Wayne, Indiana, spoke with my employee, Patricia Harrington, and told her he wanted to purchase the Jupiter stations (both FM and AM). Under direct instructions from me, Miss Harrington told him they were not for sale.

September 14, 1987. Paul Levine sent a letter to my office in Fort Wayne (Exhibit 1) asking to purchase the Jupiter stations.

October 19, 1987. Paul Levine again phoned my office in Fort Wayne, spoke with Patricia Harrington a second time, repeated his request to purchase the stations and was again told by Miss Harrington that the stations were not for sale.

October 1987. On at least two occasions Paul Levine phoned my legal counsel in Washington, D.C., James R. Bayes of Wiley, Rein & Fielding, and told Mr. Bayes that he wanted to purchase the Jupiter stations.

As I had previously given specific instructions to Mr. Bayes to tell any inquiring parties that the Jupiter stations were not available for sale, this is what Mr. Levine was told by Mr. Bayes.

November 6, 1987. Having already been told verbally by two different persons representing me that the Jupiter stations were not for sale, Paul Levine sent a second letter to me (Exhibit 2). Although he acknowledges in the second paragraph of this letter that he knows I do not wish to sell, he again asks me to sell the stations to him (in the first paragraph).

February 3, 1988. Apparently ignoring my multiple rejections of his previous offers, Paul Levine sent a third letter (Exhibit 3) in which he continues to pressure me to sell to him.

July 19, 1988. Charles Reid, another principal in "Jupiter Broadcasting Corp." phoned my office in Fort Wayne, Indiana, spoke with my employee, Patricia Harrington, and told Miss Harrington that he wanted to purchase the Jupiter stations. Miss Harrington advised Mr. Reid that the stations were not for sale.

January 3, 1989. Paul Levine, having joined forces with Charles Reid and a third partner, Philip Grabber, filed a competing application at the commission for the Jupiter AM and FM licenses using the name "Jupiter Broadcasting Corp."

January 18, 1989. Paul Levine and Charles Reid met with me for over an hour at my WKSJ/WTRU office in Jupiter. During this meeting, both Levine and Reid stated that since I refused to sell the stations to them, they had decided to use the commission's license renewal process to try to force me to sell to them. While sitting at my desk in my office, with Mr. Reid watching, Mr. Levine told me that "Jupiter Broadcasting Corp." would withdraw its competing application for the Jupiter licenses at the FCC if I would capitulate and sell the stations to his group. He made it very clear that their competing application was an FCC authorized tool for them to use to force me to sell.

February 24, 1989; May 24, 1989; July 11, 1989. On these three occasions, while discussing other matters on the phone, Paul Levine again asked me to sell the Jupiter stations to him.

4) The Commission should dismiss the application of "Jupiter Broadcasting Corp." because recent case law before the FCC shows the rejection of a challenger with similar legal structure.

"Jupiter Broadcasting Corp." was designed and set up by one of its equity principals, a Miami attorney, Paul J. Levine. Although equity shares in the corporation are owned by at least two white men, Paul Levine of Miami and Philip Grabber of Kentucky, Mr. Levine purposely structured his corporation so all the voting shares are held by a minority person, Charles Reid, a black man.

However, in a recent commission decision the FCC Administrative Law Judge labelled the challenger's legal structure to be a "sham" when the challenger gave operating control to a black woman by naming her its general partner while the white persons with equity interests were listed as limited partners. In this case involving a license challenge to Metroplex Communication Corporation, licensee of FM station WHYI, Fort Lauderdale, Florida, by challenger Southeast Florida Broadcasting, L.P., in his ruling issued January 4, 1989 and released January 27, 1989, FCC Chief Administrative Law Judge Thomas B. Fitzpatrick wrote: "The record does not support any sound business reason for Southeast's structure, other than an attempt to garner a comparative integration credit and, as a result, it is ruled that its integration proposal is rejected as a sham." The parallel here is obvious...there is no sound business reason for "Jupiter Broadcasting Corp." to be structured the way it is (with 100% voting control held by the minority partner), other than an attempt by Paul Levine and Philip Grabber to garner a comparative integration credit.

5) The commission should dismiss the application of "Jupiter Broadcasting Corp." because its legal counsel, the firm of Leibowitz and Spencer, has behaved in an unethical manner. One of the principals of this firm, Matthew L. Leibowitz, has knowingly breached the confidential attorney-client relationship which he had maintained for five years with the licensees of the Jupiter stations, U.S. Two

Broadcasting Corp., U.S. Three Broadcasting Corp., and their holding company parent corporation Group One Broadcasting Corp., whose name was later changed to R & R Broadcasting Corp. Matthew Leibowitz was retained and paid by these Jupiter licensees from early 1979 through early 1984 (see Exhibits 4 and 5). During this time much confidential financial, business and FCC license information was given to Matthew Leibowitz by the Jupiter licensees. Now Mr. Leibowitz has supplied this confidential information from his files to Jupiter Broadcasting Corp. to use in its attempt to take the FCC licenses away from the Jupiter licensees. This type of unethical behavior, a clear conflict of interest by a law firm practicing before the FCC, should not be condoned by the commission.

It should be noted that as licensee of WTRU-FM, I was sole stockholder in all three of these licensee corporations from 1984 through 1988 when the corporations were dissolved. The pending license renewal application before the commission for WTRU-FM is based on performance during the FCC seven year license period, 1982 through 1989, which includes up to three years during which Matthew Leibowitz served as legal counsel to the Jupiter licensees.

6) The "Jupiter Broadcasting Corp." application for 99.5 mHz at Jupiter should be dismissed by the commission because although the applicants state that they have a usable transmitter site, in fact, they do not. The town council of the town of Jupiter which

controls zoning and development, will not allow a tower to be built on the site proposed by "Jupiter Broadcasting Corp." Their site is directly on a major 4 lane highway (Alternate AIA) controlled by the Florida Department of Transportation. It is approximately 100 to 200 feet from the main tracks of the Florida East Coast Railway (FEC). It is directly on the Florida Intracoastal Waterway. None of these three, the Florida DOT, FEC railroad or the waterway commission will allow a tower that close to their facilities.

Their site is next to an office building, the Bayside 1001, in an area that is zoned for office buildings and certain types of retail only. A tower would need a special exception authorized by the Jupiter Town Council since the site is within the city limits. The council will not approve it because of the proximity of residential neighborhoods. The council policy is no towers in residential areas (see Exhibit 6). A residential planned unit development (PUD) called "Jupiter Harbour" is located directly across the intracoastal waterway from their proposed site, within 500 feet of their proposed tower. About 500 feet in the other direction, across highway Alternate A1A and the railroad tracks next to the highway, is another residential neighborhood including a church and the Jupiter public library. This includes residences on these neighborhood streets: Park Street, Florida Avenue, Old Dixie Highway and Townhall Avenue, all within the village of Jupiter.



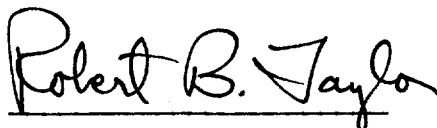
In addition, in my contacts with the Federal Aviation Administration in recent months, the FAA has advised me and others that a tower of the height proposed by "Jupiter Broadcasting Corp." would not be allowed by the FAA at that location.

7) Since the mutually exclusive application of "Jupiter Broadcasting Corp." is not a bona fide application for a license but rather is a sham and a fraud being used as a pressure tool against an existing commission licensee, this petitioner pleads for dismissal of the "Jupiter Broadcasting Corp." application for 99.5 MHz at Jupiter, Florida.

8) The call sign of WKSJ (FM) was changed to WTRU (FM) on March 30, 1989.

9) I am not represented by legal counsel at this time. This pleading is being submitted by myself as the individual licensee of WTRU (FM).

Respectfully submitted,

A handwritten signature in cursive script that reads "Robert B. Taylor". The signature is written in dark ink and is positioned above the printed name and address.

Robert B. Taylor, Licensee  
WTRU (FM)  
500 N. Delaware Blvd.  
P.O. Box 848  
Jupiter, FL 33458

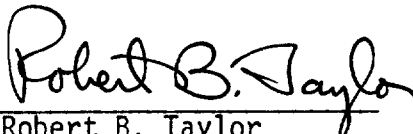
Dated: July 20, 1989

CERTIFICATE OF SERVICE

RECEIVED BY  
JUL 24 1989  
FCC MAIL BRANCH

I, Robert B. Taylor, hereby certify that on this 21st day of July, 1989, a copy of the foregoing "Petition to Deny" was mailed by United States First Class mail, postage prepaid, to the following:

Paul J. Levine, Director  
Jupiter Broadcasting Corp.  
Grossman and Roth  
Grand Bay Plaza, Penthouse 1  
2665 S. Bayshore Dr.  
Miami, FL 33133

  
Robert B. Taylor

LAW OFFICES

**SPENCE, PAYNE, MASINGTON, GROSSMAN & NEEDLE, P.A.**

SUITE 300, GROVE PROFESSIONAL BUILDING

2950 SOUTHWEST 27TH AVENUE

MIAMI, FLORIDA 33133

TELEPHONE (305) 447-0641

J. B. SPENCE  
R. W. PAYNE, JR.  
RICHARD S. MASINGTON  
STUART Z. GROSSMAN  
ANDREW NEEDLE  
STEPHEN L. MALOVE  
ROSALIND B. HERSCHTHAL  
JOHN F. EVERSOLE III  
CLAIRE B. FORD  
PAUL J. LEVINE  
OF COUNSEL

ISLAMORADA OFFICE  
MILE MARKER 81.5  
81581 OVERSEAS HIGHWAY  
ISLAMORADA, FLORIDA 33036  
(305) 664-4481  
DIRECT FROM MIAMI: 381-9267

September 14, 1987

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JUL 24 1989  
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Federal Express

Personal & Confidential

Mr. Robert B. Taylor  
WXKF-FM  
2541 Goshen Road  
Ft. Wayne, Indiana 46808

Dear Mr. Taylor:

I represent a group interested in purchasing the license of WKSX-FM and WTRU-AM in Jupiter, Florida. If you are interested in entertaining an offer, please contact me as soon as possible.

Sincerely,

  
Paul J. Levine

PJL/gb

LAW OFFICES

**SPENCE, PAYNE, MASINGTON, GROSSMAN & NEEDLE, P.A.**

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DIRECT FROM MIAMI: 381-9267

November 6, 1987

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JUL 24 1989  
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Mr. Robert B. Taylor  
P.O. Box 848  
Jupiter, Florida 33458

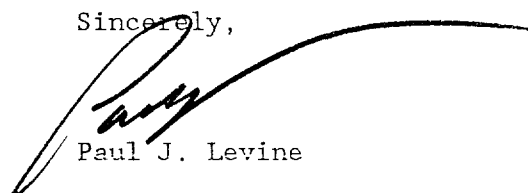
Re: WKSY-FM, WIXI-AM, Jupiter, Florida

Dear Mr. Taylor:

We represent a group that has a serious interest in purchasing your AM/FM combination in Jupiter. We understand that you intend to put the stations back on the air. We want you to know that our interest is sincere, that we are fully prepared to offer a sum as if the stations were currently on the air, and that we are capable of moving quickly.

We know that you have spurned prior offers for the stations but believe it would be advantageous for you to at least talk with us at your earliest opportunity. We look forward to hearing from you.

Sincerely,

  
Paul J. Levine

PJL/gb

LAW OFFICES

SPENCE, PAYNE, MASINGTON, GROSSMAN & NEEDLE, P. A.

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OF COUNSEL

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MILE MARKER 81.5  
81581 OVERSEAS HIGHWAY  
ISLAMORADA, FLORIDA 33036  
(305) 664-4481  
DIRECT FROM MIAMI: 381-9267

February 3, 1988

RECEIVED BY  
JUL 24 1989  
FCC MAIL BRANCH

Mr. Robert B. Taylor  
P.O. Box 848  
Jupiter, Florida 33468

Re: WKSJ-FM, WTRU-AM

Dear Mr. Taylor:

I represent a group that is interested in purchasing stations licensed to U.S. Two Broadcasting Corp. and U.S. Three Broadcasting Corporation. This is a serious inquiry on behalf of a client with the ability to move quickly. We would appreciate hearing from you if you have any interest in selling the stations.

Sincerely,

Paul J. Levine

PJL/gb

FCC  
file 10/8/80

*Law Offices*  
*Atkinson, Golden, Bacen & Diner*  
PROFESSIONAL ASSOCIATION

WILSON C. ATKINSON, III  
STEPHEN F. BACEN  
JESSE H. DINER  
ERIC H. GOLDEN  
BRYAN S. HENRY  
CONSTANCE J. KAPLAN  
MATTHEW L. LEIBOWITZ  
ADELE I. STONE

POST OFFICE DRAWER 2088  
1946 TYLER STREET  
*Hollywood, Florida 33022*  
TELEPHONE (305) 925-5501  
MIAMI 944-1882

*Tampa Office*  
SUITE 2B  
200 NORTH PIERCE STREET  
*Tampa, Florida 33602*  
(813) 228-9800

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JUL 24 1989  
FCC MAIL BRANCH

October 3, 1980

Group One Broadcasting Corporation  
Mr. Ron Winblad  
100 North Delaware Avenue  
Jupiter, FL 33458

Re: PSAs

Dear Ron:

On September 26, 1980, the Commission adopted a new policy with respect to Public Service Announcements (PSAs). Broadcasters are now permitted to use PSAs for purposes of meeting the needs and problems of their community of license. Accordingly, it would now be proper to include PSAs as illustrative programming on your annual problems-programs list that you must place in your public file each year. In addition thereto, the Commission has decided to allow broadcasters to include PSAs in the "Other" programming category of the Annual Programming Report and for purposes of renewal applications. This will have the obvious effect of assisting you in meeting your proposed percentages of "other" programming.

Best wishes.

Sincerely yours,

*Matthew L. Leibowitz*  
MATTHEW L. LEIBOWITZ

MLL/cg



KNAPE & VOGT MANUFACTURING CO.  
2700 Oak Industrial Drive N.E.  
Grand Rapids, MI 49505-6083 Phone: 616-459-3311

January 18, 1984

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JUL 24 1989  
FCC MAIL BRANCH

Mr. Matthew L. Leibowitz, P.A.  
Suite 501  
3050 Biscayne Boulevard  
Miami, FL 33137

Dear Mr. Leibowitz:


This is in response to your letter to me of January 13, 1984. I have decided to authorize R & R Broadcasting to pay your invoices of approximately \$3,973.43 sometime within the next thirty days.

As you know, I am in the process of acquiring Ron Winblad's interest in R & R Broadcasting. I am utilizing the FCC services of Wiley, Johnson & Rein (Jim Bayes) in Washington, D.C. Therefore, I will not need your future FCC services. Please do not render any services to R & R Broadcasting in the future without my express permission beforehand.

Very truly yours,

*Raymond E. Knape*  
Raymond E. Knape

REK:sr  
C: James Bayes  
Rosemary Bristow

 Unforgettable

**WVSI** AM/FM  
Radio

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**"THE STATION OF THE STARS"**  
FCC MAIL BRANCH

February 6, 1984

Mr. Matthew L. Leibowitz, P.A.  
3050 Biscayne Blvd., Suite 501  
Miami, Fl 33137

Dear Matt:

Enclosed please find our check in the amount  
of \$3,973.43 as authorized for payment by  
Mr. Raymond E. Knape.

This should close our account with you.

Sincerely,

Rosemary L. Bristow,  
R. & R. Broadcasting



# The Courier Journal

*Serving our neighbors in Jupiter, Tequesta, Jupiter Farms, West Jupiter, Jupiter Inlet Colony, Juno Beach, and Hobe Sound*

JUPITER, FLORIDA, WEDNESDAY, JANUARY 18, 1989

## New limits may be considered for TV towers

**By Yvette C. Hammett**  
Staff Writer

JUPITER — New limits could be placed on cable companies that want to add satellite dishes to their transmission towers.

After recently recommending approval of a 100-foot microwave television transmission and reception tower in Pennock Industrial Park, Planning & Zoning Commission members agreed new limits should be looked at for adding "further accessories" on such towers.

The commission voted unanimously to recommend that the Town

Council grant a special exception for the tower Telesat Cablevision Inc., because the tower would be located in the same area as two others.

However, concerns were expressed by several commission members that once these towers are allowed, some companies, in particular Jupiter Cablevision, have peppered them with additional satellite dishes, making them unsightly.

As a condition of the approval, the commission stipulated that no more than two satellite dishes could be placed on the tower.

Chuck Blaine, who represented

Telesat at the meeting, said such a condition should be no problem, because the tower will be built specifically for two dishes. To add more, he said, would require re-building the tower, "and we have no intention of doing that."

Commissioner Michael Tammaro commended Telesat for taking the time to seek a proper site for the tower. He said towers like the cable tower should be in industrial zones, a good distance from residences.

"We ought to take a look at what can be done to prevent additions of satellite dishes to the towers," Com-

mission Chairman Jerry Outlaw said.

The town attorney was directed to look into the town's legal footing.

Blaine said the tower is needed to upgrade the cable system.

"We're upgrading to increase channel capacity," he said. "To expand further, we needed a higher tower so we can bring in the Miami stations.

Adding the 100-foot tower will increase basic cable channels from 30 to 40, Blaine pointed out.